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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION
14

15 SUN MICROSYSTEMS, INC., a Delaware
corporation,

16 Plaintiff/Counterdefendant,

17 v.

18 NETWORK APPLIANCE, INC.

19 Defendant/Counterplaintiff.
20

CASE NO. C-07-05488 EDL

**JOINT CASE MANAGEMENT
STATEMENT AND [PROPOSED] ORDER**

21 Sun Microsystems, Inc. ("Sun") and Network Appliance, Inc. ("NetApp") jointly submit
22 this Case Management Statement and Proposed Order and request the Court to adopt it as its Case
23 Management Order in this case.

24 **DESCRIPTION OF THE CASE**

25 **1. A brief description of the events underlying the action:**

26 On October 29, 2007, Sun filed its Complaint for Patent Infringement, Unfair Competition
27 Under the Lanham Act and Unfair Competition under California Business and Professions Code §
28 17200.

1 On November 2, 2007, Sun filed its First Amended Complaint for Patent Infringement,
2 Unfair Competition Under the Lanham Act and Unfair Competition Under California Business
3 and Professions Code § 17200, alleging that NetApp has infringed and is infringing, directly and
4 indirectly under 35 U.S.C § 271, United States Patent Nos. 5,124,987 (“the ’987 patent”),
5 5,430,855 (“the ’855 patent”), 6,049,528 (“the ’528 patent”), 6,421,787 (“the ’787 patent”),
6 5,632,012 (“the ’012 patent”) and 5,721,937 (“the ’937 patent”) (collectively “the Sun Patents”)
7 by making, using, selling, or offering for products, services, methods and/or systems, including
8 without limitation NetApp’s Fabric Attached Storage products, NetApp’s V-series products, and
9 NetApp’s Nearstore products. Sun seeks a permanent injunction to prevent future infringements
10 as well as damages adequate to compensate it for NetApp’s past infringement and trebling of
11 damages pursuant to 35 U.S.C. § 284 because NetApp’s infringement of the Sun Patents is and
12 has been willful. Sun further alleges that NetApp has engaged in unfair competition under the
13 Lanham Act and under California Business and Professions Code § 17200 et seq. and seeks
14 damages relating thereto.

15 On December 21, 2007, NetApp filed its Answer and Counterclaim to First Amended
16 Complaint, denying the material allegations of the Amended Complaint and asserting a number of
17 affirmative defenses and counterclaims. NetApp denies infringing any of the Sun Patents and
18 alleges that Sun infringes United States Patent Nos. 6,574,591 (“the ’591 patent”), 6,868,417
19 (“the ’417 patent”), 7,107,385 (“the ’385 patent”) and 7,130,873 (“the ’873 patent”). NetApp
20 further seeks a declaratory judgment that the Sun Patents are each not infringed, invalid and/or
21 unenforceable. NetApp seeks a permanent injunction to prevent future infringements as well as
22 damages adequate to compensate it for Sun’s past infringement and trebling of damages pursuant
23 to 35 U.S.C. § 284 because Sun’s infringement of these patents is and has been willful. NetApp
24 further alleges that Sun has engaged in unfair competition under the Lanham Act and under
25 California Business and Professions Code § 17200 et seq. and seeks damages relating thereto.

26 On January 14, 2008, Sun filed its Reply to NetApp’s Answer and Counterclaims,
27 denying the material allegations of NetApp’s Answer and Counterclaim and asserting a number
28 of affirmative defenses and counterclaims. Sun denies infringing any of the NetApp Patents.

Pursuant to Court Order, on February 19, 2008, NetApp filed a Supplemental Answer and Counterclaims, asserting infringement of United States Patent No. 7,313,720 ("the '720 patent"), in addition to the '591 patent, '417 patent, '385 patent and '873 patent (collectively, "the NetApp Patents"). With respect to the NetApp Patents, NetApp seeks a permanent injunction to prevent future infringements as well as damages adequate to compensate it for Sun's past infringement and trebling of damages pursuant to 35 U.S.C. § 284 because Sun's infringement of these patents is and has been willful. On March 7, 2008, Sun filed its reply to NetApp's Supplemental Answer and Counterclaims, denying the material allegations of NetApp's Supplemental Answer and Counterclaims and asserting a number of affirmative defenses and counterclaims. Sun denies infringing any of the NetApp Patents. Sun further seeks a declaratory judgment that the NetApp Patents are each not infringed and are invalid and unenforceable.

2. The principal factual issues which the parties dispute:

- (a) Whether any of the Sun Patents are infringed by any of NetApp's products.
- (b) Whether any of the NetApp Patents are infringed by any of Sun's products.
- (c) Whether any claims of the Sun Patents or the NetApp Patents are invalid.
- (d) If one or more of the Sun Patents are infringed (and not invalid or unenforceable), what damages and/or other relief would be appropriate.
- (e) If one or more of the NetApp Patents are infringed (and not invalid or unenforceable), what damages and/or other relief would be appropriate.
- (f) If one or more of the Sun Patents are infringed (and not invalid or unenforceable), whether that infringement was willful.
- (g) If one or more of the NetApp Patents are infringed (and not invalid or unenforceable), whether that infringement was willful.
- (h) Whether NetApp engaged in unfair competition under the Lanham Act and/or California Business and Professions Code § 17200 and, if so, the amount of damages that are appropriate.
- (i) Whether Sun engaged in unfair competition under the Lanham Act and/or California Business and Professions Code § 17200 and, if so, the amount of damages that are

appropriate.

3. The principal legal issues which the parties dispute:

(a) How disputed terms in each asserted claim of the Sun Patents and the NetApp Patents should be construed.

(b) Whether any claims of the Sun Patents or the NetApp Patents are invalid.

(c) Whether one or more of the '528 patent, '787 patent, '417 patent, '591 patent, '873 patent or '385 patent are unenforceable due to inequitable conduct before the United States Patent and Trademark Office.

(d) Whether either party's recovery, if any, is limited to any alleged infringement committed no more than six years prior to the filing of that party's claims pursuant to 35 U.S.C. § 286.

(e) Whether NetApp is barred from obtaining the relief it seeks due to failure to comply with the marking requirements of 35 U.S.C. § 287 and/or prosecution history estoppel.

(f) Whether Sun is barred from obtaining the relief it seeks due to laches and/or patent misuse.

(g) If any infringement of the NetApp Patents or Sun Patents was willful, whether increased damages should be awarded.

(h) Whether either party is entitled to attorney's fees under 35 U.S.C. § 285 or costs.

(i) Whether NetApp engaged in unfair competition under the Lanham Act and/or California Business and Professions Code § 17200.

(j) Whether Sun engaged in unfair competition under the Lanham Act and/or California Business and Professions Code § 17200.

4. The other factual issues [e.g. service of process, personal jurisdiction, subject matter jurisdiction or venue] which remain unresolved for the reasons stated below and how the parties propose to resolve those issues:

No such issues remain unresolved.

-4-

1 **5. The parties which have not been served and the reasons:**

2 No parties remain to be served.

3
4 **6. The additional parties that the below-specified parties intend to join**
5 **and the intended time frame for such joinder:**

6 The parties do not intend to join any additional parties.

7
8 **CONSENT TO MAGISTRATE JUDGE FOR TRIAL**

9 7. Both parties consent to assignment of this case to Magistrate Judge Laporte
10 for jury trial.

11
12 **ALTERNATIVE DISPUTE RESOLUTION**

13 8. A settlement conference before Judge Spero has been scheduled for June
14 24, 2008.

15 **DISCLOSURES**

16 10. The parties certify that they have made the following disclosures:
17 Both parties have timely served their Fed. R. Civ. P. 26(a)(1) initial disclosures.

18 **DISCOVERY & MOTIONS**

19 11. The parties agree to the following discovery plan:
20 Stipulated Discovery Limits.

Doc. Req.:	Pltf. <u>no limit</u>	Def. <u>no limit</u>
Req. Adm.:	Pltf. <u>no limit</u>	Def. <u>no limit</u>
Interrogatories ¹ :	Pltf. <u>40</u>	Def. <u>40</u>

24 **Depositions.** The parties agree that there should be no limit on the total number of
25 depositions taken by each party. The parties further agree that the seven-hour limit set forth in
26 Fed. R. Civ. P. 30(d)(2) should apply, with two exceptions. First, inventor depositions shall be

27 ¹ The parties agree that no interrogatory shall be objectionable as containing sub-parts on the
28 ground that a single interrogatory requires a response as to some or all of the patents in suit.

limited to one day per patent. If a party wishes to exceed these limits without agreement from the other side, the party will need to show good cause. There is a soft presumptive limit of 14 hours for Rule 30(b)(6) depositions. Deposition time of someone deposed as an individual does not count towards 30(b)(6) deposition time. The parties further agree that any deposition transcript from the 6053 Case may be used or relied upon for any purpose in the 5488 Case (and vice-versa).

Service by email. The parties have agreed that, when practical, documents concerning this action should be served by email to each of the attorneys of record in this action. Documents served by email will be treated as though served by hand on the date email service occurs. The deadline for serving documents to comply with a discovery, rule-based, or court-ordered deadline is Midnight, Pacific time.

Service of Re-examination Documents. In addition to the discovery limits set forth above, the parties agree that they will serve litigation counsel with copies of documents submitted to or received from the USPTO in connection with a request for re-examination of a patent-in-suit. In the case of documents submitted to the USPTO, service will occur via email on the same day as the submission is made. In the case of documents received from the USPTO, service will be made via email within three business days of receipt.

Protective Order. The Court entered a protective order on March 3, 2008.

Case Schedule.

The parties' proposed schedule is as follows:

Event	Date
Deadline to serve Rule 26(a) initial disclosures	March 20, 2008
Deadline to submit to court Rule 26(f) conference report	March 24, 2008
Initial Rule 16 Management Conference	March 31, 2008
Deadline for party claiming patent infringement to serve Disclosure of Asserted Claims and Infringement Contentions and produce documents PR 3-1, 3-2.	April 10, 2008

Event	Date
Deadline for PR 3-3 Invalidity Contentions (and PR 3-4 document production) to be served. To extent not already required to be disclosed, exchange Mandatory Disclosures other than information directed solely toward damages. <i>PR 3-3, 3-4.</i>	May 30, 2008
Deadline for parties to exchange proposed terms for construction and identify any claim element governed by 35 U.S.C. Section 112(6) <i>PR 4-1.</i>	June 13, 2008
Deadline for parties to exchange preliminary proposed claim construction and extrinsic evidence supporting same <i>PR 4-2.</i>	June 27, 2008
Deadline to file Joint Claim Construction and Prehearing Statement; provide an estimate of how many pages are needed to brief the dispute. <i>PR 4-3.</i>	August 6, 2008
Deadline to complete claim construction discovery <i>PR 4-4.</i>	September 3, 2008
Deadline for party claiming patent infringement to file opening claim construction brief <i>PR 4-5(a).</i>	September 12, 2008
Deadline to file responsive brief and supporting evidence <i>PR 4-5(b).</i>	September 26, 2008
Deadline for party claiming patent infringement to serve and file reply claim construction brief <i>PR 4-5(c).</i>	October 10, 2008
Claim Construction Hearing <i>PR 4-6.</i>	<i>October 31, 2008</i>

TRIAL SCHEDULE

12. The parties request a trial date as follows:

Both parties have demanded trial by jury on all issues for which trial by jury is allowed. The parties request that a trial date be set at a Further Case Management Conference following the Court's Markman ruling.

1 **13. The parties expect that the trial will last for the following number of**
 2 **days:**

3 A determination of the number of days required for the trial would best be made at a
 4 Further Case Management Conference following the Court's Markman ruling.

5 **ADDITIONAL ISSUES**

6 1. **Sun's Reply to NetApp's Supplemental Answer and Counterclaims:**

7 When Sun filed its Reply to NetApp's Answer and Counterclaims on January 14, 2008,
 8 Sun inadvertently failed to include a declaratory judgment counterclaim regarding the NetApp
 9 Patents. Sun has since remedied this inadvertent mistake in its Reply to NetApp's Supplemental
 10 Answer and Counterclaims, filed on March 7, 2008. NetApp does not object to Sun's inclusion
 11 of a declaratory relief action vis-à-vis the NetApp Patents. Pursuant to Rule 13(f), Sun
 12 respectfully requests that the Court permit Sun to rely on its March 7, 2008 Reply to NetApp's
 13 Supplemental Answer and Counterclaims.

14 2. **Patent Local Rule 2-1(a):** With respect to the topics listed in Patent L.R.
 15 2-1(a), the parties do not at this time believe that there is a need for any specific limits on
 16 discovery related to claim construction. The parties believe that it is premature to address
 17 whether live testimony should be heard at the claim construction hearing, the order of
 18 presentation, or the scheduling of a claim construction pre-hearing conference at this time. The
 19 parties will discuss these issues with each other as discovery proceeds and will make a joint
 20 proposal to the Court concerning the logistics for the *Markman* hearing.

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SIGNATURE AND CERTIFICATION BY PARTIES AND LEAD TRIAL COUNSEL

Pursuant to Civil L.R. 16-12, each of the undersigned certifies that he or she has read the brochure entitled "Dispute Resolution Procedures in the Northern District of California," discussed the available dispute resolution options provided by the court and private entities and has considered whether this case might benefit from any of the available dispute resolution options.

Dated: March ____, 2008

Sun Microsystems, Inc.

Dated: March 24, 2008

DLA PIPER US LLP

By /s/ Christine K. Corbett

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Dated: March 24, 2008

/s/ Gary Ross

Network Appliance, Inc.

Dated: March 24, 2008

/s/ Edward R. Reines

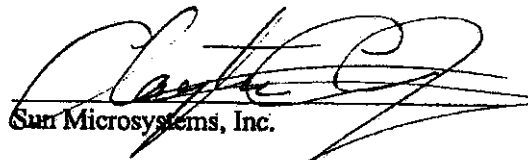
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Dated: March 21, 2008



Sun Microsystems, Inc.

Dated: March __, 2008

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By

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CASE MANAGEMENT ORDER

The Case Management Statement and Proposed Order is hereby adopted by the Court as the Case Management Order for the case and the parties are ordered to comply with this Order.

In addition the Court orders:

Plaintiff is ordered to serve a copy of this order on any party subsequently joined in this action.

Dated:

ELIZABETH D. LAPORTE
United States Magistrate Judge